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Paper No.

FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON DC 20007

MAILED

JUL 12 2010

OFFICE OF PETITIONS

Applicant: Mochida, et al. Issue Date: Dec. 16, 2008

Application No: 10/081,208

Patent No. 7,465,429

Filed: Feb. 25, 2002

Attorney Docket: 080542-0157 : PATENT TERM ADJUSTMENT

: ON PETITION

37 CFR 1.705(d)

: REQUEST FOR RECON

This is a decision on the petitions filed on January 5 and January 15, 2010, which are being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred forty-one (1141) days. The Office is acting upon the timely filed petition filed January 5, 2008 and not the untimely filed request of January 15, 2010.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred forty-one (1141) days is GRANTED-in-PART.

Patentees request recalculation of the patent term adjustment based on the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that in view of the decision in Wyeth, they are entitled to a total patent term adjustment of 1141 days, which includes 290 days due to exceeding three year pendency.

In view of the Federal Circuit decision Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010), patentees request is granted-in-part. In the instant situation, patentees do not dispute the "A" period delay of 518 days.

Patentees err in the "B" period calculation by one day. In that, the period is calculated from the day after the 36 months, i.e. from February 26, 2005 until one day before the filing of an RCE or the issue date. In this case the RCE was filed on December 12, 2005; hence the "B" period extends from February 26, 2005 to December 11, 2005, for a total of 289 days. Thus, the PTA term is the total "A" delay of 518 days, plus the total "B" delay of 289 days, plus the "C" delay of 519 days, minus applicant's delay of 0 days. As a result the request of a total PTA of 1141 days is granted-in-part for a total of 1140 days.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The applicant is giving one month or thirty (30) days whichever is longer to reply to this DECISION. After the response period has elapsed, the Office will sua sponte issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred and forty (1140) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Maria Nuzzolillo, (571) 272-8150.

/Kery Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT

: 7,465,429 B2

DATED

: December 16, 2008

Draft

INVENTOR(S): Mochida, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by (1140) days

Delete the phrase "by 851 days" and insert - by 1140 days--

Day: Monday Date: 7/12/2010



PALM INTRANET

Time: 09:08:53

PTA Calculations for Application: <u>10/081208</u>						
Application Filing Date:	02/25/2002	PTO Delay (PTO):	1037			
Issue Date of Patent:	12/16/2008	Three Years:	0			
Pre-Issue Petitions:	0 ,	Applicant Delay (APPL):	186			
Post-Issue Petitions:	0	Total PTA (days):	1140			
PTO Delay Adjustment:	289					

File Contents History						
Number	Date	Contents Description	PTO	APPL	START	
95	07/12/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	289			
91.5	11/25/2008	PTA 36 MONTHS				
91	12/16/2008	PATENT ISSUE DATE USED IN PTA CALCULATION				
90	11/20/2008	EXPORT TO FINAL DATA CAPTURE				
89	11/19/2008	DISPATCH TO FDC				
88	11/19/2008	APPLICATION IS CONSIDERED READY FOR ISSUE				
87	11/14/2008	ISSUE FEE PAYMENT VERIFIED				
86	11/14/2008	ISSUE FEE PAYMENT RECEIVED				
		FINISHED INITIAL DATA CAPTURE				
84	09/25/2008	MAIL RESPONSE TO 312 AMENDMENT (PTO-271)				
83	09/24/2008	RESPONSE TO AMENDMENT UNDER RULE 312				
82	09/12/2008	AMENDMENT AFTER NOTICE OF ALLOWANCE (RULE 312)		14	84	
81	09/12/2008	MAIL BOA MISCELLANEOUS COMMUNICATION TO APPLICANT				
80	09/12/2008	BOA MISCELLANEOUS COMMUNICATION TO APPLICANT				
79	08/18/2008	EXPORT TO INITIAL DATA CAPTURE				
78	08/15/2008	MAIL NOTICE OF ALLOWANCE				
77	08/15/2008	ISSUE REVISION COMPLETED				
74	08/07/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING				
73	08/06/2008	DOCUMENT VERIFICATION				
72	08/07/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED				

71	08/01/2008	NOTICE OF ALLOWABILITY			
70	07/23/2008	MAIL BPAI DECISION ON APPEAL - REVERSED	519		46
69	07/23/2008	BPAI DECISION - EXAMINER REVERSED			
68	06/25/2008	CONFIRMATION OF HEARING BY APPELLANT			
67	06/05/2008	NOTIFICATION OF APPEAL HEARING			
65	04/25/2008	DOCKETING NOTICE MAILED TO APPELLANT			
64	04/25/2008	ASSIGNMENT OF APPEAL NUMBER			
63	04/02/2008	APPEAL AWAITING BPAI DOCKETING			
62	11/29/2007	MAIL REPLY BRIEF NOTED BY EXAMINER			
61	11/27/2007	REPLY BRIEF NOTED BY EXAMINER			
60	11/16/2007	DATE FORWARDED TO EXAMINER			
59	11/07/2007	REPLY BRIEF FILED			
58	11/07/2007	REQUEST FOR ORAL HEARING			
57	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
56	10/01/2007	EXAM. ANS. REVIEW COMPLETE			
55	09/07/2007	MAIL EXAMINER'S ANSWER			
54	09/05/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
53	07/12/2007	APPEAL BRIEF REVIEW COMPLETE			
52	07/12/2007	DATE FORWARDED TO EXAMINER			
51	06/13/2007	APPEAL BRIEF FILED			
50	06/11/2007	NOTICE DEFECTIVE APPEAL BRIEF			
49	06/07/2007	APPEAL BRIEF REVIEW COMPLETE			
48	06/07/2007	DATE FORWARDED TO EXAMINER			
47.1	04/18/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
47	04/18/2007	APPEAL BRIEF FILED			
46	02/21/2007	NOTICE OF APPEAL FILED		28	40
45	02/21/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
44	02/12/2007	MAIL ADVISORY ACTION (PTOL - 303)			
43	02/07/2007	ADVISORY ACTION (PTOL-303)			
42	02/06/2007	DATE FORWARDED TO EXAMINER			
41	01/23/2007	AMENDMENT AFTER FINAL REJECTION			
40	10/24/2006	MAIL FINAL REJECTION (PTOL - 326)			
39	10/23/2006	FINAL REJECTION			
38	08/31/2006	DATE FORWARDED TO EXAMINER			
37	08/24/2006	RESPONSE AFTER NON-FINAL ACTION		88	35
36	08/24/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	02/28/2006	MAIL NON-FINAL REJECTION			

34	02/24/2006	NON-FINAL REJECTION		,	
33	02/25/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	12/20/2005	DATE FORWARDED TO EXAMINER			
31	12/12/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
30	12/20/2005	DATE FORWARDED TO EXAMINER			
29	12/12/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		31	25
28	12/20/2005	DISPOSAL FOR A RCE / CPA / R129			
27	12/12/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	12/12/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	08/11/2005	MAIL FINAL REJECTION (PTOL - 326)			
24	08/08/2005	FINAL REJECTION			
23	05/25/2005	DATE FORWARDED TO EXAMINER			
22	05/06/2005	RESPONSE AFTER NON-FINAL ACTION		25	20
21	05/06/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	01/11/2005	MAIL NON-FINAL REJECTION			
19	01/10/2005	NON-FINAL REJECTION			·
18	10/28/2004	DATE FORWARDED TO EXAMINER			
17	10/22/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
16	10/22/2004	WORKFLOW INCOMING AMENDMENT IFW			
15	09/24/2004	MAIL RESTRICTION REQUIREMENT	518		-1
14	09/21/2004	ISSUE REVISION COMPLETED			
13	09/21/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
12	10/15/2003	REFERENCE CAPTURE ON IDS			
11	10/15/2003	CLAIMS PTO			
10	10/14/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	10/14/2003	CLAIMS PTO			
8.7	02/25/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	02/25/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	02/25/2002	PRELIMINARY AMENDMENT			
6	04/16/2002	CASE DOCKETED TO EXAMINER IN GAU			
5	04/09/2002	APPLICATION DISPATCHED FROM OIPE			
4	04/09/2002	APPLICATION IS NOW COMPLETE			
3	03/27/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
	1				

2	03/08/2002	IFW SCAN & PACR AUTO SECURITY REVIEW		
1 (02/25/2002	INITIAL EXAM TEAM NN		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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